IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.8843 OF 2003

Govind Laxman Bhosale & Anr. : Petitioners
(Orig. Plaintiff)

V/s.

Anandrao Laxman Bhosale : Respondent
(Orig. Defendant)

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Mr.Ramesh Kumar Gite i/b. Mr.Anilkumar Patil for the petitioner.

Mr.Nitin Pradhan i/b. Mr.S. Pradhan for the respondent.

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CORAM : S.A. BOBDE, J.
February 4, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Pradhan waives service of rule on behalf of the respondent.

Heard by consent.

2. The petitioner challenges the order of the trial Court rejecting amendment of the plaint. The petitioner initially has filed a suit, being Regular Civil Suit

No.103 of 2001, for perpetual injunction against the respondent. Apparently, the respondent in his written statement denied that the suit property was partitioned and, therefore, contested the injunction. As a result, the petitioner moved an application for injunction seeking partition and separate possession of the suit property. This application has been rejected by the trial Court against which the present Writ Petition is filed.

3. It was contended on behalf of the petitioner that the amendment was necessary for determining the real controversy in the suit and, therefore, ought to have been allowed. This contention was resisted by the learned counsel for the respondent who submitted that the amendment changes the nature of the suit.

4. Be that as it may, it is clear that the amendment application was moved because of the contention raised by the respondent that the suit property has not been partitioned and, therefore, the petitioner was not entitled to injunction. Undoubtedly, the petitioner would have been entitled to file another suit for partition and separate possession. In the circumstances and with a view to avoid multiplicity of litigation, I am of view that the amendment ought to have been allowed, in the interest of

justice. Hence, the impugned order 14.7.2003 below exh.85 in Regular Civil Suit No.103 of 2001 is set aside. The petitioner shall be allowed to carry out the proposed amendment.

5. The rule is made absolute in the aforesaid terms.

Sd/-

S.A. BOBDE, J.